

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Emerson M. Anderson,

Case No. 5:09 CV 159

Petitioner,

MEMORANDUM OPINION
AND ORDER

-VS-

JUDGE JACK ZOUHARY

Timothy Brunsman,

Respondent.

Pro se Petitioner Emerson Anderson, a prisoner in state custody, filed a Petition for Writ of Habeas Corpus (Doc. No. 1). Petitioner alleges his detention violates the Sixth and Fourteenth Amendments of the U.S. Constitution. This Court has jurisdiction under 28 U.S.C. § 2254(a).

The case was referred to United States Magistrate Judge Vernelis Armstrong for a Report and Recommendation (R&R) pursuant to Local Rule 72.2(b)(2). The Magistrate Judge recommended the Court dismiss the Petition because it was not filed within the one-year statute of limitations (Doc. No. 13). *See* 28 U.S.C. § 2244(d)(1).

Petitioner filed an Objection (Doc. No. 16) to the R&R. In accordance with *Hill v. Duriron Co.*, 656 F.2d 1208 (6th Cir. 1981) and 28 U.S.C. § 636(b)(1)(B) & (C), this Court has made a *de novo* determination of the Magistrate's findings. This Court agrees the Petition was filed after the one-year period expired and therefore adopts the R&R in its entirety, with one bookkeeping modification: the Ohio Supreme Court denied Petitioner's Motion to File a Delayed Appeal on August 29, 2007 (not September 13, 2007) (Doc. No. 8-1, p. 198).

To summarize the Magistrate's conclusions with the corrected date: Petitioner's conviction became final on March 5, 2007, and the statute was tolled for a total of 134 days during the pendency of various post-trial motions. *See* 28 U.S.C. § 2244(d)(2) ("The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."). The filing period therefore expired on July 14, 2008. The instant Petition was not filed with this Court until January 22, 2009.

Accordingly, this Court adopts the Magistrate's recommendation to grant Respondent's Motion to Dismiss (Doc. No. 8), deny Petitioner's Motion for Copy of Record (Doc. No. 5), and deny as moot Petitioner's Motion for Summary Judgment (Doc. No. 11). The Petition for Writ of Habeas Corpus is dismissed.

Further, under 28 U.S.C. §§ 1915(a) and 2253(c), this Court certifies that an appeal of this action could not be taken in good faith and that Petitioner has failed to make a substantial showing of the denial of a constitutional right. Therefore, this Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

March 12, 2010